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In re Application of
TEMPLE, Kit : DECISION ON
Application No.: 10/541,090 :
PCT No.: PCT/EP03/51065 : PETITION
Int. Filing Date: 18 December 2003 :
Priority Date: 30 December 2002 : UNDER 37 CFR 1.47(b)
Attorney's Docket No.: 884A.0119.U1(US) :
For: DISTRIBUTING CONTENT DATA :

This is a decision on applicant's "Renewed Petition Under 37 C.F.R. 1.47(b)," filed in the United States Patent and Trademark Office on 20 November 2006 on behalf of the assignee and the non-signing inventor Kit Temple. The petition under 37 CFR 1.47(b) is DISMISSED.

BACKGROUND

On 18 December 2003, applicant filed international application PCT/EP03/51065, claiming a priority date of 30 December 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 30 June 2005.

On 29 June 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee.

On 13 December 2005, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 14 April 2006, applicant submitted the declaration, the surcharge for late filing of the declaration, a two-month extension fee, a petition under 37 CFR 1.47(b) requesting acceptance of the application without the signature of the applicant and, a "Statement of Facts" to support the petition including, a declaration by Mr. James Seymour, copies of the letters mailed to inventor Kit Temple and, a statement by Ms. Becky Green, a Human Resources administrator, regarding the employment period of inventor Kit Temple with Nokia (UK) Ltd.

On 18 September 2006, the Office dismissed applicant's petition because the "Statement of Facts" in support of the petition was found lacking in firsthand knowledge of the facts recited therein. The decision further indicated that applicant had not provided evidence of proprietary interest in the application as required under 37 CFR 1.47(b).

On 20 November 2006 applicant filed the present petition under 37 CFR 1.147(b) requesting acceptance of the application without the signature of inventor Kit Temple, a declaration by Mr. James Seymour that inventor Kit Temple was employed by Nokia (UK) Ltd. when the claimed invention of the instant application was made and a copy of inventor Kit Temple's employment agreement.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

As presented in the Decision mailed 18 September 2006 items (1), (3), (4) and (6) have been met.

With regard to item (2), petitioner explains that the letters mailed to inventor Kit Temple were the letters of Mr. James Seymour, hence concluding that Mr. James Seymour had firsthand knowledge. However, a review of the letters mailed to inventor Kit Temple shows that a person different than Mr. James Seymour signed the letters. Therefore, petitioner's position that Mr. James Seymour had firsthand knowledge cannot be sustained because it appears that someone else signed the letters for Mr. James Seymour.

With regard to item (5), the copy of inventor Kit Temple's employment agreement does not fully satisfy the requirements of 37 C.F.R. 1.47(b). As set out in MPEP 409.03(f), when an employment agreement is relied upon to satisfy the requirements of 37 C.F.R. 1.47(b), a statement by a person having firsthand knowledge must be included to show that the invention was made by the employee while employed by the 37 C.F.R. 1.47(b) applicant. The declaration of Mr. James Seymour is lacking in firsthand knowledge because it does not describe the circumstances that led to Mr. Seymour knowing that the invention was made by inventor Kit Temple while employed by the 37 C.F.R. 1.47(b) applicant. It is noted that the statement of Ms. Becky Green, a Human Resources administrator, filed on 14 April 2006, also does not satisfy the requirements of 37 C.F.R. 1.47(b) because it merely indicates the employment period of inventor Kit Temple with Nokia (UK) Ltd. and does not show firsthand knowledge that the invention was made by inventor Kit Temple while employed by the 37 C.F.R. 1.47(b) applicant.

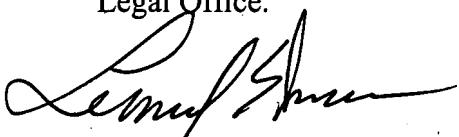
Based on the totality of the evidence currently of record, it would not be appropriate to consider the requirements of 37 CFR 1.47(b) to have been satisfied.

CONCLUSION

Applicant's petition requesting acceptance of the application without the signature of the inventor is DISMISSED, without prejudice, for the reasons described *supra*.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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